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Anna G. Bradshaw

ORIGINAL

## FEDERAL COMMUNICATIONS COMMISSION

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In Re Applications of:	)	MM DOCKET No.: 97-122
	)	
GERARD A. TURRO	)	File No.: BRFT-970129YC
	)	BRFT-970129YD
For Renewal of License for	)	
FM Transistor Stations	)	
W276AQ(FM), Fort Lee, New	)	
Jersey, and W232AL(FM),	)	
Pomona, New York,	)	
	)	
MONTICELLO MOUNTAINTOP	)	
BROADCASTING, INC.	)	
	)	
Order to Show Cause Why the	)	
Construction Permit for FM	)	
Radio Station WJUX(FM),	)	
Monticello, New York, Should	)	
Not Be Revoked	)	

C O R R E C T E D C O P Y

Volume: 3  
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Date: October 8, 1997

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### HERITAGE REPORTING CORPORATION

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Courtroom 1  
FCC Building  
2000 L Street, N.W.  
Washington, D.C.

Wednesday,  
October 8, 1997

The parties met, pursuant to the notice of the  
Judge, at 10:05 a.m.

BEFORE: HON. ARTHUR I. STEINBERG  
Administrative Law Judge

APPEARANCES:

On behalf of MONTICELLO MOUNTAINTOP BROADCASTING,  
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On behalf of the FCC:

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
NONE.					

E X H I B I T S

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
NONE.			

Hearing Began: 10:05 a.m.      Hearing Ended: 12:07 p.m.

P R O C E E D I N G S

(10:05 a.m.)

1  
2  
3 JUDGE STEINBERG: We're on the record. This is  
4 another prehearing conference in MM Docket No. 97-122. I  
5 scheduled the conference on my own to consider two Motions  
6 to Compel which were filed by Gerard A. Turro seeking to --  
7 the first one seeks to compel the Mass Media Bureau to  
8 basically sharpen up or correct its Answers to  
9 Interrogatories, and the second one seeks the Bureau's  
10 further responses to admissions requests. And I thought  
11 that the easiest way to do this, the simplest way to do this  
12 would be to do it orally.

13 I found -- frankly, I found the first motion a  
14 little difficult to follow, and -- because I like Motions to  
15 Compel to say "Interrogatory X, this is the problem.  
16 Interrogatory Y, this is the problem," and it was -- it  
17 wasn't done that way, although I can see why it wasn't done  
18 that way.

19 Before we start, I want to let you know that I  
20 checked on the status of the request to take Mr. Loginow's  
21 deposition. There has been no change in the status. It's  
22 still pending up at the Commission level, and the individual  
23 that I checked with had no further information, had no idea  
24 when it would be taken up and, hopefully, it will be taken  
25 up before Mr. Loginow is scheduled to testify. But if it's

1 not, we'll do what we can do to deal with that.

2 What I'm going to propose is basically I've got  
3 notes and a list of what specific Interrogatories and what  
4 specific admissions requests are the subjects of the motion  
5 and I'm just going to bring them up and have Mr. Mr.  
6 Naftalin briefly state his position, have the Bureau briefly  
7 respond and then I'll rule.

8 I'd also like to just comment and this might  
9 affect your presentations in that the last prehearing  
10 conference we had, the September 2nd Motion to Compel had  
11 just been filed, if my memory serves me and Mr. Naftalin and  
12 Mr. Aronowitz had a lengthy conversation which resulted in  
13 Mr. Aronowitz' September 9, 1997 letter to Mr. Naftalin  
14 which dealt with the bulk of the stuff raised in the Motion  
15 to Compel and I, in preparing for the conference, I read the  
16 Motion to Compel very carefully and I read the Bureau's  
17 September 9 letter very carefully and my opinion is I think  
18 that the Bureau -- I don't see why the letter doesn't  
19 satisfy the concerns raised in the Motion to Compel. If  
20 it's just a matter of the letter being, you know, sort of  
21 unsworn and unsponsored, et cetera, et cetera, we can take  
22 care of that problem real quick or very quickly, you know,  
23 because I, you know, I have to be correct.

24 MR. ARONOWITZ: Your Honor, and I just wasn't  
25 sure. I Faxed this to everybody and I hope I followed it up

1       --

2               JUDGE STEINBERG:  Yes.

3               MR. ARONOWITZ:  -- via post.  I want to make sure  
4       everybody has a copy of the September 9 letter.  I brought  
5       some extras just in case.

6               JUDGE STEINBERG:  Okay.  I, you know, with that  
7       background, let me also say that it's -- I'll let Mr.  
8       Naftalin make his presentation, the Bureau respond and then,  
9       if Mr. Riley and Mr. Helmick want to interject a comment or  
10      two, you know, that's fine.  Just, you know, just let me  
11      know.  I don't want to cut them out of the action here.

12              Okay.  The first request would relate to  
13      Interrogatory -- Turro's Interrogatory -- Turro had two  
14      Interrogatories No. 5, May 23rd set of Interrogatories to  
15      the Bureau and the August 7 set of Interrogatories to Serge  
16      Loginow.  They both requested the same thing and you're  
17      asking that -- that, you know, this apparent discrepancy in  
18      the Answers, so why don't I let you present it, and if you -  
19      -

20              MR. NAFTALIN:  Certainly.  The discrepancy was  
21      that in that -- in Mr. -- the August 20 Interrogatory  
22      responses the Bureau or Mr. Loginow and the allegation we  
23      recited there is part of the ordering clausung in the  
24      hearing designation order, so we felt obliged to seek some  
25      kind of clarification as to why the Bureau said that, and I

1 am pleased to say Mr. Aronowitz' letter says the Bureau  
2 presently has no evidence in its possession that the Pomona  
3 translator violated Section 74.5310 of the Commission's  
4 Rules, which is what we were seeking.

5 I'm troubled by the word "presently" because the  
6 purpose of all of this is to try and establish what will be  
7 in the record and to avoid surprises in the direct case. If  
8 we can -- we would be more than happy to accept a statement  
9 that there is no evidence that that translator violated that  
10 Rule and go on. We're satisfied.

11 JUDGE STEINBERG: Mr. Aronowitz.

12 MR. ARONOWITZ: That is exactly what we have. I  
13 can't necessarily --

14 JUDGE STEINBERG: You can't predict the future?

15 MR. ARONOWITZ: I can't predict the future and  
16 that's why I just said "presently". That's the only way.  
17 In fact, --

18 JUDGE STEINBERG: Yes, just if something changes,  
19 you'll let Mr. Naftalin and Mr. Riley and Mr. Helmick know  
20 immediately.

21 MR. ARONOWITZ: Absolutely.

22 JUDGE STEINBERG: Okay. That takes care of Number  
23 5. The next one I have it the May 23, Interrogatory Number  
24 31 and the May 23 Interrogatory Number 40. I guess you tied  
25 those together.



1 MR. ARONOWITZ: This is with respect to the  
2 inspections?

3 JUDGE STEINBERG: Yes.

4 MR. NAFTALIN: I'm sorry, Your Honor, which two  
5 was it?

6 JUDGE STEINBERG: Numbers 31 and 40. 31, describe  
7 the investigation conducted by the inspector and Number 40  
8 was describe all actions taken to conduct the investigation.

9 MR. NAFTALIN: Your Honor, if I may, I'd like to  
10 make a more general observation about the discovery of  
11 inspections in this case. There has been inconsistency in  
12 the Bureau's responses to either Interrogatory requests or  
13 Admissions requests with respect to Mr. Loginow's activity.  
14 Mr. Loginow being the FCC's field engineer who conducted the  
15 inspections and who the Bureau has stated is the only FCC  
16 staff member with knowledge of the facts. And what has --  
17 the inconsistencies arise among the documents which the  
18 Bureau produced which were written by Mr. Loginow either  
19 contemporaneously with activities or closely  
20 contemporaneously with his activities, those being his  
21 station inspection report, which describes -- it's his  
22 statement of what he did in April and May of 1995 and then,  
23 two copies of E-mails that he sent to Mr. Barone -- appears  
24 to have sent to Mr. Barone, one on August 1, 1995 reporting  
25 what he did the previous day and one on August 4, 1995

1 reporting his activities of August 2.

2 If these -- if these -- and I have trouble dealing  
3 with all of this except as a complete view of the  
4 disclosures and the descriptions of what Mr. Loginow have  
5 done. Where we are right now -- where we are now is that  
6 there are rather clear discrepancies between what Mr.  
7 Loginow has said contemporaneously, what has been  
8 suggested -- what has been said in Interrogatories and then,  
9 what the Bureau's responses have been in Admissions.

10 JUDGE STEINBERG: Okay. Let me just stop there.  
11 If there's a discrepancy -- I mean, let's say we come to the  
12 hearing, Mr. Loginow is going to take the stand. He's going  
13 to testify however he's going to testify and if there's a  
14 discrepancy between what he's stated in writing  
15 contemporaneously with the -- with the inspections and what  
16 he says on the stand, you can cross-examine, Mr. Riley can  
17 cross-examine, Mr. Helmick can cross-examine and pin him  
18 down. Then Mr. Aronowitz or Ms. Friedman will have an  
19 opportunity to explain any of the discrepancies.

20 I'm -- I'm not terribly concerned -- well, I  
21 shouldn't say that. To the extent that the Interrogatory  
22 Answers are conflicting and inconsistent, that is a concern  
23 to me and that if there's an incorrect answer or response it  
24 should be corrected as soon as possible. That being said, I  
25 think the key question is, do the Answers to the

1 Interrogatories, do the documents that were turned over, did  
2 they reveal all of the information relating to all of the  
3 inspections which took place, and I'll ask -- I'll ask Mr.  
4 Aronowitz if that's the case. Does everything you know  
5 about the inspections, every document you have relating to  
6 the inspections has been turned over to the other party; is  
7 that correct?

8 MR. ARONOWITZ: That's correct.

9 JUDGE STEINBERG: As you are sitting here, today,  
10 you don't know of any other inspections?

11 MR. ARONOWITZ: I know of one other inspection not  
12 related to this case involving Mr. Loginow and Mr. Turro at  
13 a station not involved. In fact, I'll lay it right out for  
14 the record, it was apparently an interference complaint with  
15 respect to Franklin Lakes, New Jersey. Franklin Lakes, New  
16 Jersey --

17 JUDGE STEINBERG: Okay. Yes, you said that in a  
18 footnote or something.

19 MR. ARONOWITZ: I've noted that.

20 JUDGE STEINBERG: Okay. Yes.

21 MR. ARONOWITZ: I mean, there are -- you know,  
22 there was that, but that's not relevant to this proceeding.

23 JUDGE STEINBERG: Right.

24 MR. ARONOWITZ: There was nothing --

25 JUDGE STEINBERG: Okay. But I mean, you know, the

1 stuff that we're arguing about, the stuff that's the subject  
2 matter of the issues, that's within the scope of the issues,  
3 you don't know of anything as you're sitting here today that  
4 you haven't disclosed?

5 MR. ARONOWITZ: That's correct, Your Honor.

6 JUDGE STEINBERG: That's what I'm concerned with,  
7 and if there are Answers that are incorrect, I would ask Mr.  
8 Aronowitz to identify them and correct them. Now, you know,  
9 with your help. If something does come up in the future and  
10 it should have been disclosed and it wasn't disclosed, then  
11 I have the option of not receiving it into evidence and not  
12 hearing testimony on it because that might be unfair  
13 surprise. You know, if it's not impeachment or prior  
14 inconsistent statement type of stuff, which I don't think is  
15 really necessary to exchange, but I'm talking about any  
16 factual matter that they try to raise -- that the Bureau  
17 tries to raise that hasn't been disclosed is a sanction, and  
18 the sanction is "Well, you should have disclosed it, you  
19 didn't disclose it. It's unfair, and I'm not going to  
20 receive it. I'm not going to consider it." You know,  
21 that's the option that I have.

22 Now, let me turn the table -- the floor back to  
23 you.

24 MR. NAFTALIN: Your Honor, I agree with all of  
25 that. The concern is, and I'd like to focus on the

1 admissions for a moment because I think that --

2 JUDGE STEINBERG: We're going to do that  
3 separately.

4 MR. NAFTALIN: Oh, okay. That's fine. All right.  
5 In terms of direct responses to the Interrogatories, I tend  
6 to agree if there's opportunity for cross examination, so be  
7 it. We are now clear that the Bureau has turned over all  
8 evidence relevant to Mr. Loginow's activity relevant to this  
9 proceeding, and nothing else is -- or, it's unlikely is  
10 going to come in in a direct case, then we would be  
11 satisfied with that.

12 JUDGE STEINBERG: Okay. I mean, my understanding,  
13 from reading the documents and reading the Bureau's  
14 supplements, at the time the original answers were given,  
15 even they didn't know about some of this stuff or the -- but  
16 it seems to me like it was disclosed when -- I shouldn't say  
17 the Bureau -- Mr. Aronowitz and Ms. Friedman didn't know.  
18 Now, whether they should have asked more people is a  
19 different question. But it seems to me like everything that  
20 should have been turned over to you was turned over to you,  
21 albeit some of it not until later than other portions of it.

22 MR. NAFTALIN: Well, Your Honor, we have stated  
23 here and I certainly don't need to labor it that it's our  
24 view that really all -- virtually all of the information  
25 that has eventually been forthcoming should have been

1     forthcoming early in the discovery period rather than late,  
2     and to some extent that has made Mr. Turro's defense more  
3     burdensome perhaps undermined to some extent.

4             Information obtained early in a period allows  
5     counsel and parties to guide their further discovery efforts  
6     according to what they learn and we've been -- we've felt it  
7     necessary to conduct a lot of additional motions and --  
8     and -- and expense matters to try and pursue evidence. We  
9     have that in the record and we stand by what we've said  
10    there but, again, if we finally get to the end of the day  
11    and, one, all relevant information has been disclosed  
12    through the Interrogatory process, then we -- and we have  
13    the body of the information that's available then that is  
14    what we sought.

15            JUDGE STEINBERG: Mr. Aronowitz? You don't have  
16    to say anything if you don't want to.

17            MR. ARONOWITZ: I think I'll -- I think it's all  
18    been said.

19            JUDGE STEINBERG: Mr. Riley?

20            MR. RILEY: Your Honor, the only comment I have it  
21    is I assume when Mr. Aronowitz spoke this morning about  
22    everything that is known having been revealed, he means not  
23    only what is know to Mr. Aronowitz or Ms. Friedman, trial  
24    counsel, but what is known to Mr. Loginow because Mr.  
25    Loginow is their witness. He's speaking for the body of

1 knowledge Mr. Loginow would have.

2 MR. ARONOWITZ: That's correct.

3 JUDGE STEINBERG: I should also -- I just want to  
4 comment that just -- I just want to comment that both of the  
5 Motions to Compel were filed after the discovery completion  
6 deadline and, if I wanted to, I could have said discovery  
7 was supposed to end on this date, motions are dismissed.  
8 But I recognized -- and also the same thing with the request  
9 for admissions. I think that came in but I'm not positive  
10 about that date. Maybe it didn't. But I factored that into  
11 -- you know, I realize that you got a lot of this  
12 information late and so I really haven't strictly held to  
13 that whatever the discover completion deadline was. So I  
14 have given you a little flack there, too, you know,  
15 recognizing what your problems are. I just wanted to put  
16 that on the record.

17 Okay. The next one -- the next group of  
18 Interrogatories were August 7th Interrogatories number 43,  
19 55, 56 and 57. Why don't you briefly state your problems  
20 with the answers to those?

21 MR. NAFTALIN: These were the --

22 JUDGE STEINBERG: The Roy Stewart letter.

23 MR. NAFTALIN: Yes, --

24 JUDGE STEINBERG: Or the Roy Stewart statement  
25 that certain things went to Loginow.

1           MR. NAFTALIN: The Bureau has now in a letter said  
2 that Mr. Stewart was incorrect in what he said, and we're  
3 satisfied with that.

4           JUDGE STEINBERG: Okay. Now let's go to May 23rd  
5 and August 7th Interrogatory Nos. 1, 2, 3 and 4, which  
6 basically relates to all documents, all information known to  
7 the Bureau, FCC people with knowledge, non-FCC people with  
8 knowledge, et cetera. Why don't you address that?

9           MR. NAFTALIN: Certainly. There's -- we have been  
10 confused consistently about -- particularly with respect as  
11 to who subscribes to the truth and accuracy of Interrogatory  
12 responses. We have -- the Bureau has stated that Mr.  
13 Loginow is the only member of the Commission -- the only FCC  
14 employee with personal knowledge and he at the -- with the  
15 exception of the last set of Interrogatory responses all  
16 previous Interrogatory responses were testified to by  
17 persons who reputedly don't have personal knowledge, nor  
18 were they certified to by a representative of the Bureau, a  
19 chief or an assistant chief in that respect, and we want to  
20 be clear in the record what the effect of that may or may  
21 not be.

22           In addition, we ask which staff members have  
23 knowledge of the matters of this case and the Bureau's taken  
24 the position that anyone who doesn't have firsthand  
25 knowledge -- any knowledge that's not, quote, unquote,



1 "Firsthand," would be irrelevant, and the problem with that  
2 is -- I think I recognize the Bureau's concern that if  
3 someone in the Gettysburg office read the HDO, would they be  
4 considered to have some kind of knowledge, and we're  
5 certainly not trying to get at that. But, if, for instance,  
6 Mr. Loginow had discussions with someone about what he saw  
7 or heard that would be helpful to us, the person who head  
8 that wouldn't have firsthand knowledge but, nonetheless,  
9 they would have relevant information and we're trying to  
10 seek -- we're certainly not trying to seek the universe of  
11 people who may have read a public order. We are trying to  
12 seek the information known to people who have in some way  
13 directly had contact with either the conduct of this  
14 proceeding, with the investigation of the proceeding, with  
15 the collection or analysis of the facts of this proceeding.

16 JUDGE STEINBERG: Mr. Aronowitz, why don't you  
17 address the certification thing? Let -- let me just ask,  
18 you signed some of the certifications or verifications as  
19 Ms. Friedman signed others --

20 MS. FRIEDMAN: Right.

21 JUDGE STEINBERG: To the best of your knowledge  
22 and information and belief, were those Answers true,  
23 complete and accurate?

24 MR. ARONOWITZ: Yes, Your Honor.

25 JUDGE STEINBERG: And, Ms. Friedman?

1 MS. FRIEDMAN: Yes.

2 JUDGE STEINBERG: Okay. Mr. Naftalin, you said  
3 you don't know the effect of those certifications. The  
4 effect of the certifications is the Bureau is bound by the  
5 Answers.

6 MR. NAFTALIN: Okay.

7 JUDGE STEINBERG: Period. That's it. The  
8 Bureau's in a little different position because they, you  
9 know, they can't -- you can run to Mr. Turro, Mr. Riley can  
10 run to Mr. Weise and get them to sign a nice thing saying,  
11 "These are the facts as I know them." Now, the Bureau can't  
12 run -- Roy Stewart doesn't know anymore of the facts,  
13 probably he knows far less of the facts, probably or anyone  
14 in the Bureau hierarchy.

15 The only person that knows the facts, from my  
16 understanding, is Mr. Loginow and he signed a whole set by  
17 himself. Now, whether he should be signing these other --  
18 the Bureau's Answers and the supplements and everything, I  
19 mean, I don't know because he -- he's not a Bureau employee  
20 and the Interrogatories were to the Bureau. It's very  
21 confusing and it's confusing to me, too. But the important  
22 point is that they're verifying and standing behind the  
23 answers and if the answers are incorrect, they have been  
24 corrected. You pointed out discrepancies and they have  
25 tried to explain the discrepancies and that's what I think

1 is important.

2 Now, with respect to the other stuff as to who has  
3 knowledge, now Mr. Barone sent E-mails back and forth to --  
4 or Mr. -- well, the way I understand it Norman Goldstein did  
5 something to ask somebody to investigate, so he purportedly  
6 knows something. Mr. Barone did other things, so he  
7 purportedly knows something. Does anybody else know  
8 anything in the Bureau?

9 MR. ARONOWITZ: I don't know. That's our problem.

10 JUDGE STEINBERG: But, I mean, --

11 MR. ARONOWITZ: That's a joke. For the record,  
12 that was a joke.

13 JUDGE STEINBERG: Okay. Let the record reflect  
14 humor. Okay.

15 MR. ARONOWITZ: Please. Your Honor, again, we've  
16 told the story, we've told who got what, who knew what, who  
17 didn't know what, when they didn't know it, when they knew  
18 it. I just fail to understand the concern here.

19 JUDGE STEINBERG: Well, what would you do with the  
20 information?

21 MR. ARONOWITZ: With respect to attestations.

22 JUDGE STEINBERG: You know, let's say Mr. Loginow  
23 had a conversation with whoever his superior is about "Gee,  
24 I went over there and I think they were -- I think the stuff  
25 was coming in over the air." Well, he wrote that down. You

1 can ask -- when he takes the stand, you know, let's say you  
2 don't get his deposition -- this would be something you  
3 would ask him at his deposition. Ask him when he takes the  
4 stand. I mean, if he doesn't -- if you don't depose him,  
5 I'm going to be very liberal with the questions you're going  
6 to be able to ask him because I recognize that there are  
7 follow-up questions that you haven't asked.

8 You know, assuming that they are relevant to the  
9 matter at hand. I mean, that's the only thing that I can  
10 do.

11 You can ask him, "Did you tell this to anybody?"  
12 But then, from that point, I don't know where you go.

13 MR. NAFTALIN: If during the discovery phase we  
14 had an opportunity to know who he reported to and what --  
15 and the substance -- well, if the only reports he ever did  
16 were the brief written matters we've seen, then that's --

17 JUDGE STEINBERG: You could have put that into the  
18 first set of Interrogatories to Mr. Loginow. You could have  
19 -- you could have proceeded after -- the day after the  
20 initial prehearing conference you could have sent a set of  
21 Interrogatories to Mr. Loginow. Now, I know you put your --  
22 you put your apples in the barrel of the deposition, and I -  
23 - and I agree with you. I supported you, which may or may  
24 not do any good, but there are certain things that could  
25 have been done --

1 MR. NAFTALIN: Well, Your Honor, I would --

2 JUDGE STEINBERG: Earlier.

3 MR. NAFTALIN: I would like to dispute that, if I  
4 may.

5 JUDGE STEINBERG: Okay.

6 MR. NAFTALIN: Our view is that when we seek  
7 information from the Bureau, that information should be  
8 anything known to the Bureau or available to the Bureau and  
9 under its control, and that would include -- included way  
10 back when, in May, when we first sought Interrogatories what  
11 would be known to Mr. Loginow, what was available to Mr.  
12 Loginow since he was the Commission's employee, he inspected  
13 pursuant to a request by the Bureau, and he reported to the  
14 Bureau and that information should have been forthcoming,  
15 has been forthcoming and I can't accept that we have not  
16 taken the best effort we can to discover all information  
17 relevant to him.

18 We filed the second set of -- we filed two sets of  
19 Interrogatories. The second set that we filed was at an  
20 invitation of the Bureau to direct them specifically to Mr.  
21 Loginow. We did so rather than argue the procedure of  
22 whether that was appropriate or not because, frankly, I just  
23 didn't want to have another procedural dispute. If they  
24 wanted to see what was, in effect, a lot of similar  
25 questions by saying, "Please answer Mr. Loginow" instead of

1 "Bureau, please collect this information, including from Mr.  
2 Loginow" we were willing to do that. But I think the  
3 substance of virtually all of our questions have been before  
4 the Bureau since May 23rd, and -- and whether they were  
5 known to Mr. Loginow or anybody else should have been  
6 responded to promptly.

7 JUDGE STEINBERG: Okay. Mr. Riley, you wanted to  
8 add something?

9 MR. RILEY: Well, I did want to add something,  
10 Your Honor. This, I don't think the Commission's Rules on  
11 discovery permit directing Interrogatories to individual  
12 employees of the FCC. I think the reason we were able to  
13 direct Interrogatories to Mr. Loginow by name is simply that  
14 the Bureau said, "If you want to ask Mr. Loginow questions,  
15 write Interrogatories addressed to Mr. Loginow," but the  
16 Rule says that Interrogatories are to be addressed to the  
17 chief of the bureau in the proceeding, not to an individual  
18 employee.

19 If I had wanted to ask Mr. Barone questions in  
20 written Interrogatories since I'm not allowed to take his  
21 deposition, the Rules don't allow me to address  
22 Interrogatories to Mr. Barone. The Bureau specifically  
23 invited Interrogatories to Mr. Loginow, and when the Bureau  
24 invited that, we took them up on it.

25 JUDGE STEINBERG: Okay.

1 MR. RILEY: It seems to me that given the  
2 Commission's discovery rules which essentially protect the  
3 Commission from the sort of discovery that can be conducted  
4 against private parties, limit the discovery that can be  
5 engaged in, at the least hypothetically, we were entitled  
6 with Interrogatories addressed to the Bureau to find out  
7 whether Mr. Loginow had said to their superior in CIB.  
8 These complaints filed by Universal are a bunch of trash,  
9 that they have no basis, in fact, that these signals come in  
10 off the air.

11 And then he sends a written report to Mr. Barone  
12 that doesn't use that language but essentially says these  
13 signals come in off the air. That's what I detected. We  
14 don't know what superior he reported to and whether he made  
15 that hypothetical statement, so we can't get that  
16 information from the superior. That's what happened in the  
17 course of this discovery process.

18 JUDGE STEINBERG: Okay. Let me just say I stand  
19 corrected, and I withdraw my comments and I apologize for  
20 them to the extent that I was incorrect.

21 MR. NAFTALIN: Thank you, Your Honor.

22 JUDGE STEINBERG: I hadn't thought of it in those  
23 terms, and you've straightened me out.

24 MR. NAFTALIN: Thank you.

25 JUDGE STEINBERG: Mr. Aronowitz, do you want to

1 respond?

2 MR. ARONOWITZ: To what? I've got a number of  
3 responses. I'm not certain -- did I understand you to say  
4 there was no ability for you to do Interrogatories to a  
5 Commission employee?

6 MR. RILEY: For Mr. Loginow.

7 MR. ARONOWITZ: Isn't that provided for in the  
8 Rules?

9 MR. RILEY: I believe not.

10 MR. ARONOWITZ: It just says you can't do it by  
11 written --

12 MR. RILEY: You can't do it oral --

13 MR. ARONOWITZ: All right. Well, I mean, if you  
14 had filed one, two or three sets of Interrogatories against  
15 Serge in a written fashion, we would have had no objection.

16 JUDGE STEINBERG: Wait a minute. Here we go.

17 MR. ARONOWITZ: I mean, you know, --

18 JUDGE STEINBERG: I got the Rule 1.311(b)2  
19 Commission personnel -- I'm quoting, "Commission personnel  
20 may not be questioned by deposition for the purposes of  
21 discovery except on special order of the Commission, but may  
22 be questioned by written Interrogatories under Section  
23 1.323." --

24 MR. RILEY: Yes.

25 JUDGE STEINBERG: "Interrogatories shall be served



1 on the appropriate Bureau chief, they will be answered and  
2 signed by those personnel with knowledge of the facts." So  
3 what Mr. Riley is -- okay, what Mr. Riley is --

4 MR. RILEY: This gets back to the verification  
5 matter that Mr. Naftalin raised when the first set of  
6 Interrogatories were submitted if, in deed, Mr. Loginow was  
7 the only person with knowledge, those Interrogatories should  
8 have been answered by Mr. Loginow. They were not. They  
9 were answered by Mr. Aronowitz or Ms. Friedman and later it  
10 turned out that there were other inspections and that was  
11 determined only when Mr. Loginow was personally questioned  
12 by Mr. Aronowitz.

13 MR. ARONOWITZ: I don't believe that's accurate,  
14 Mr. Riley. I don't believe that's accurate.

15 MR. RILEY: Well, I may have the sequence wrong  
16 but I think that it was your further investigation of Mr.  
17 Aronowitz that turned up facts that weren't available to you  
18 and --

19 MR. ARONOWITZ: No, and I will -- I object to  
20 that.

21 MR. RILEY: I'm sorry I said it then.

22 MR. ARONOWITZ: And I strenuously object to that.  
23 We answered for the Bureau. We did not raise the procedural  
24 objection that the Interrogatories to Serge should have been  
25 served on complaints and investigation, whatever used to be